

Library of Congress

Facts? Let Them Eat Docudrama

By DAVID BURNHAM

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WASHINGTON, June 3—As members of President Reagan's Cabinet leave office, they currently can impose greater secrecy on some of their Government papers than will be available to Mr. Reagan when he departs the White House.

This anomaly has upset the chairman of the House Information Subcommittee, some historians and the National Archives. Underlying their unhappiness is a broad concern for the accuracy of history.

They were aroused most recently, for example, upon learning that, without any announcement, former Secretary of State Alexander M. Haig Jr. had deeded 200,000 of his official and personal papers to the Library of Congress with restrictions that may keep some of them from public view for more than twice as long as the current law will allow Mr. Reagan.

The Presidential Papers Act

The paradox, that top Government officials can prevent independent historians from examining Government documents for a longer period than can the President, is partly a result of the Presidential Papers Act of 1978. This law, an outgrowth of legal disputes over the papers of former President Richard M. Nixon, governs the disposition of White House documents for all Presidents in office after January 1981.

In general terms, it states that a President's papers must become public within 12 years of his leaving office providing they do not fall within certain special categories. A second provision is that experts at the National Archives rather than the former President or his staff will decide which papers are covered by the more restricted categories.

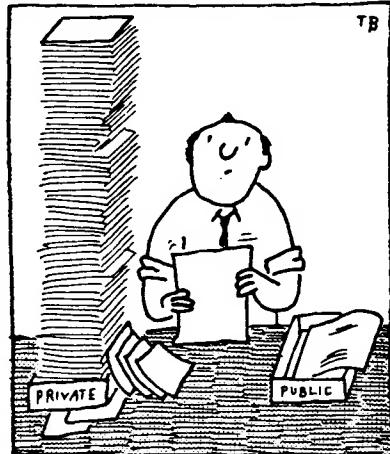
For all other officials, there are a number of very generally worded laws that require their Government documents to be maintained. The Freedom of Information Act, adopted in 1966, added the requirement that most documents be made available to the public on request.

Contributing to the paradox is a 1980 Supreme Court ruling that, despite the Freedom of Information Act, a reporter and two public interest groups were not entitled to the transcripts and notes of the telephone conversations of former Secretary of State Henry A. Kissinger once they had been placed in the fortified vaults of the Library of Congress.

"The current practice provides agency officials with the opportunity

to remove embarrassing documents and assure that only those assistants who they have approved can see them," said Representative Glenn English, Democrat of Oklahoma, chairman of the House information subcommittee.

"This is because when an agency head leaves office he generally is free to remove what he considers his personal papers," Mr. English continued. "Unfortunately, the line between official and unofficial is not always clear and there seldom is any one in the agency who is able to stand up to



Drawings by Tom Bloom

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—Anna K. Nelson

the departing boss and stop the removal of the official ones."

Anna K. Nelson, a history professor at George Washington University who is chairman of the Committee on Access of the Organization of American Historians, said, "Our major concern is that history can be distorted when written by self-serving memoirists."

"Because historians are not getting access to records until long after the death of important figures," she added, "historians are not able to write accurate contemporary history."

Spokesmen for both Mr. Haig and Mr. Kissinger declined to offer specific comment on the issue.

Of Checks and Balances

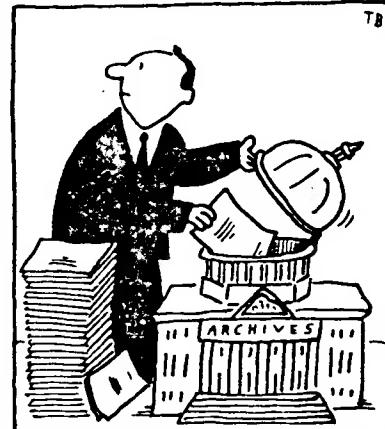
The handling of official records is an integral part of the Federal Government and its system of checks and balances. A complete record is essential for the continuing administration of each agency, for resolving disputes that may arise in future legal challenges and for history.

Private control of records, on the other hand, may be of great importance to the reputation and financial well-being of former Government officials.

Because Mr. Kissinger's telephone records are sealed in the Library of Congress, for example, it is impossible to judge how much he relied upon them when he wrote his best-selling volumes describing his years as President Nixon's special assistant for foreign affairs and Secretary of State. It is also impossible to determine the contribution such transcripts might make to critical evaluations of Mr. Kissinger's place in history and the continuing functioning of Government.

Top officials have been deeding their papers to the Library of Congress, with various restrictions, since the first years of the Republic. Since the Roosevelt Administration, however, the papers of many Cabinet officers have been deeded to the growing system of Presidential libraries, where they often have become available quite promptly.

With the forced resignation of President Nixon and the subsequent



long delay in the formation of his library, members of his Cabinet apparently saw the Library of Congress as an alternative depository.

Challenges Increasing

But because of the adoption of the Freedom of Information Act, the Presidential Papers Act and several other laws, the legality and appropriateness of such transfers have increasingly been challenged by historians, public interest groups, members of Congress and the National Archives.

The first serious challenge came in 1976 after Mr. Kissinger provided the Library of Congress with the notes and detailed transcripts of all his telephone conversations while he was a Government official. The move was made on condition that no one could look at the papers without his permission until the year 2001 or five years after his death, whichever is later.

The challengers contended Mr. Kissinger's actions violated the Freedom of Information Act. In 1980 the Supreme Court ruled that because the documents were already in the possession of the Library of Congress, which is not covered by act, no legal remedy was available to those seeking to read them. The Court specifically said, however, that it was not ruling on the underlying questions of whether the Kissinger transcripts were agency records or whether they had been wrongfully removed from the State Department.

When an official deeds his documents to the Library of Congress, two kinds of papers are usually involved. The first is copies of "official" papers. The originals, which are subject to the provisions of the Freedom of Information Act, normally stay with the agency until they are passed on to the National Archives. The second category are "personal" papers, copies of which are not maintained by the agency. In the Kissinger case, the linked decisions to declare the telephone transcripts "personal" and deed them to the Library of Congress had the effect of exempting them from the Information Act.

The Haig Papers

Mr. Haig, in separate deeds signed in 1979 and 1982, appears to have followed many of the practices worked out by Mr. Kissinger. "The collection of papers from the department consists of personal papers and extra copies of Government papers," a State Department official, William H. Price, said in a 1982 letter to the National Archives explaining the transfer to the Library of Congress.

Mr. Price said that under the deed the papers would be open to the public in 25 years or five years after Mr. Haig's death, whichever is later. "In the meantime, Secretary Haig will use the collection to prepare a historical account of his years in Government or to give information and testimony that may be requested of him concerning his years in office," he said.

Mr. Haig's book, "Caveat," was published in April.

The National Archives and Records Service, the official repository of all Government records, asked both Mr. Kissinger and Mr. Haig to allow it to insure the integrity of the State Department's administrative files by deciding which Government papers were official and which were "personal" and thus eligible for the protective shield provided by a deed to the Library of Congress.

According to Robert M. Warner, the Archivist of the United States, the State Department in both cases refused to allow the archives to review the records in question.

To support his argument in favor of an independent review, Mr. Warner cited a ruling by Federal District Judge Harold Greene on an unrelated documents case that "it is clear that the independent professionals of the National Archives and Records Service are the final arbiters of what is 'appropriate for preservation' from the Government's point of view."

The authority of the National Archives is now being debated by Congress. Under a bill sponsored by Representative English and approved by



the House Government Operations Committee, for example, an agency or top Government official could not refuse a request by the Archivist to examine documents. The legislation would also give the Archivist authority to initiate legal action in concert with the Attorney General to recover any papers unlawfully removed from an agency. The Senate version of the bill is less specific.

Others Follow Same Path

Meantime, another Reagan Administration official seems to be following the same path as Mr. Haig. Secretary of Defense Caspar W. Weinberger, who held a number of positions in the Nixon Administration, has given the Library of Congress about 250,000 documents from the years he held such posts as chairman of the Federal Trade Commission and director of the Office of Management and Budget. Although he has not yet imposed specific restrictions on their public availability, in their current status at the library the documents remain unavailable to the public.

In response to an inquiry, Mr. Weinberger confirmed the transfer. "When I came back to Washington I had my papers sent for deposit to the Library of Congress," he said. "I had no attorney. It was all done with a single letter and phone call three and a half years ago."

A third top Nixon era official who has deeded his papers to the Library of Congress is Elliot L. Richardson, who also served in the Ford Administration. He held such posts as Attorney General, Secretary of Health, Education and Welfare, Secretary of Defense and Secretary of Commerce. According to the deed, his papers are not to be viewed in his lifetime.